

Office Supreme Court, U. S.

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No. 242

Supreme Court of the United States.

October Term, 1922.

No.

**NASSAU SMELTING & REFINING WORKS,
LTD.,**

PETITIONER,

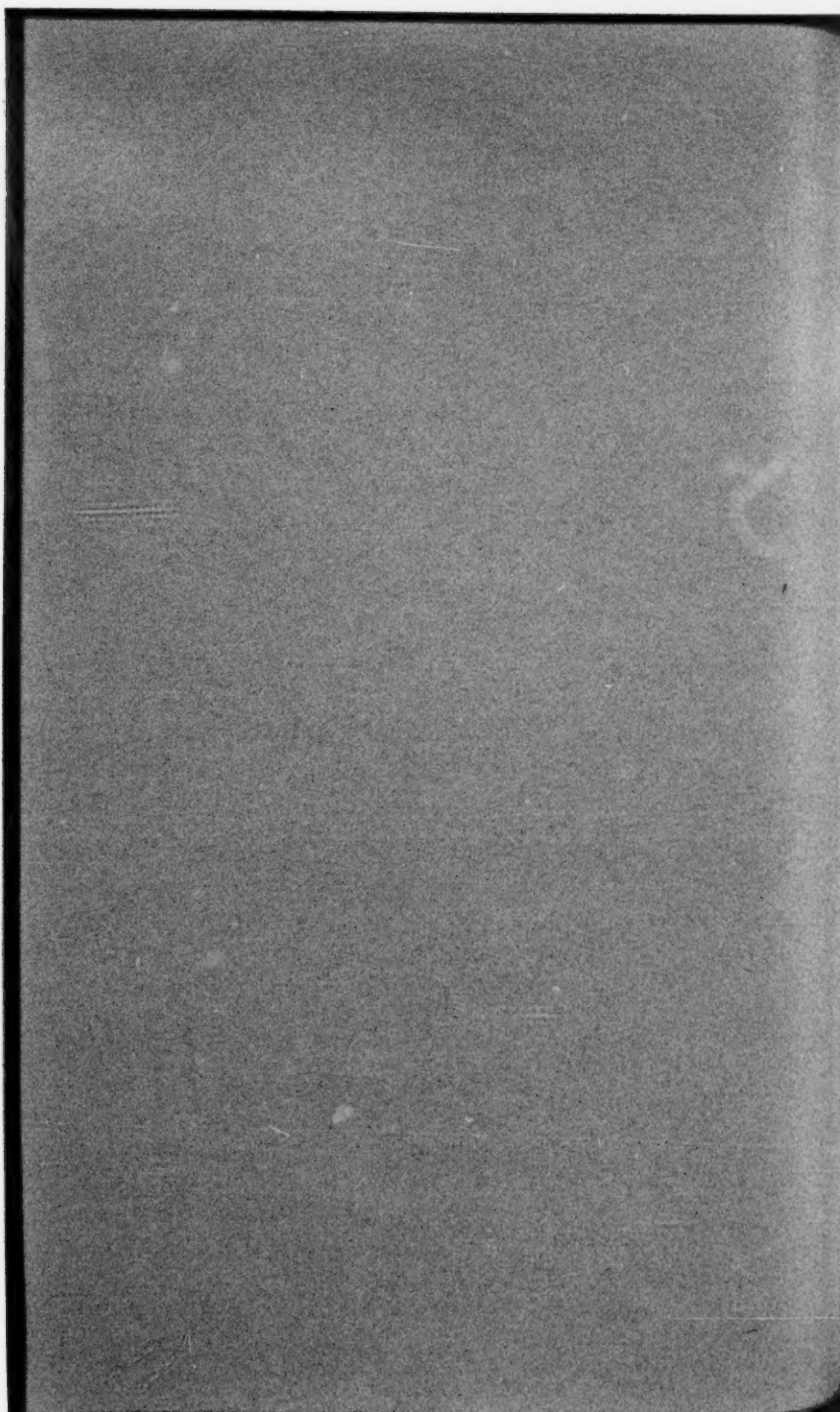
v.

**BRIGHTWOOD BRONZE FOUNDRY
COMPANY,
RESPONDENT.**

**Petition for Writ of Certiorari and
Brief for Petitioner.**

**JOSEPH R. JACOBS,
ROBERT F. LEVIE,
JACOBS & JACOBS,**

Attorneys for Petitioner.



Supreme Court of the United States.

OCTOBER TERM, 1922.

NASSAU SMELTING & REFINING WORKS,
LTD.,

PETITIONER,

v.

BRIGHTWOOD BRONZE FOUNDRY COMPANY,
RESPONDENT.

NOTICE.

The respondent is hereby notified that the petitioner will on Monday, March 19, 1923, upon his verified petition and a copy of the entire record in this cause, at the opening of the Court on that day or as soon thereafter as counsel can be heard, submit a petition for a writ of certiorari, a copy of which and of the brief in support thereof are herewith delivered to you, to the Supreme Court of the United States in its courtroom at the Capitol in the City of Washington, D.C.

JOSEPH B. JACOBS,

ROBERT P. LEVIS,

JACOBS & JACOBS,

Attorneys for Petitioner.

SPRINGFIELD,

1923.

The foregoing notice is hereby accepted and delivery of a copy of the petition for writ of certiorari and brief in support of the petition is hereby acknowledged.

Attorneys for Respondent.

Supreme Court of the United States.

OCTOBER TERM, 1922.

NASSAU SMELTING & REFINING WORKS,
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PETITIONER,

v.

BRIGHTWOOD BRONZE FOUNDRY COMPANY,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the United States Supreme Court:

The petitioner, Nassau Smelting & Refining Works, Ltd., respectfully shows to this Honorable Court as follows:

That it is a corporation duly organized by law, with a usual and principal place of business in the City, County, and State of New York, and is a creditor in the amount of \$11,356.44 of the Brightwood Bronze Foundry Company, which was duly adjudicated bankrupt by the District Court of the United States for the District of Massachusetts on the 19th day of November, 1920, upon an involuntary petition in bankruptcy filed on the 5th day of November, 1920.

That previous to the filing of the involuntary petition in bankruptcy the bankrupt made a general assignment for the benefit of its creditors on the 10th day of September, 1920, to one Henry Lasker, the bankrupt's attorney. That the said Henry Lasker

down to the date of the filing of this petition has remained in possession of the assets of the bankrupt.

That after said adjudication in bankruptcy the bankrupt made an offer of composition on February 12, 1921, of twenty-five per cent (25%) cash, and a meeting to consider the composition was held on February 25, 1921.

That the fund necessary to put through said composition has not been deposited with the Clerk of the United States District Court as is required by law.

On the 27th day of March, 1922, the bankrupt filed a petition to be permitted to deposit to meet the composition offer a fund sufficient only to pay those creditors whose claims have hitherto been proved and allowed.

That your petitioner appeared and objected to the aforesaid petition of the bankrupt.

That your petitioner's claim was not filed or allowed within a year of the date of adjudication in bankruptcy, but your petitioner has since filed its claim and seeks to have it allowed in order to share in the composition dividend.

That your petitioner claims the right to have sufficient funds deposited to pay the composition dividend on its claim, irrespective of whether or not its claim was proved and allowed within a year from the date of the adjudication in bankruptcy.

That the matter came on for hearing in the United States District Court for the District of Massachusetts on said petition of the bankrupt and on your petitioner's objection thereto, and the United States District Court decided that, as your petitioner's claim was not proved and allowed within the year, it was not en-

titled to any composition dividend, and that section 57*n* of the Bankruptcy Act limiting the proof and allowance of claims to one year applied to composition proceedings.

The Circuit Court of Appeals, with Anderson, J., dissenting, sustained this ruling of the District Court.

The petitioner submits that the learned Circuit Court of Appeals erred in the following particulars, and prays that this Honorable Court will examine and review the record in this case, and revise the ruling of the said Circuit Court of Appeals:

(1) It is an erroneous interpretation of section 12 of the Bankruptcy Act.

(2) It is erroneous to apply section 57*n* of the Bankruptcy Act to composition proceedings.

(3) It is contrary to the views already intimated by this Court.

(4) It is inconsistent and contrary to well-considered decisions from other Districts.

It is important that the practice on this important point of bankruptcy law should be uniform, and that the proper interpretation of the statute should be established.

Wherefore your petitioner prays that the whole record may be examined, reviewed, and revised by this Honorable Court, and that such orders may be made as justice may require.

And your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the First Circuit, commanding said Court to verify and send to this Court on a day certain, to be therein designated, a full and complete

transcript of the record of all proceedings of said Circuit Court of Appeals in this case (which was entitled in that Court *Nassau Smelting & Refining Works, Ltd., Appellant, v. Brightwood Bronze Foundry Company, Appellee, In the matter of Brightwood Bronze Foundry Company, Bankrupt*, and numbered 1579 on the docket of said Court), to the end that said cause may be reviewed and determined by the Court as provided by law; and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate; and that said judgment of the said Circuit Court of Appeals may be reversed by this Honorable Court.

NASSAU SMELTING & REFINING
WORKS, LTD.,

By its Attorneys,

JOSEPH B. JACOBS,
ROBERT P. LEVIS,
JACOBS & JACOBS.

COMMONWEALTH OF MASSACHUSETTS.

COUNTY OF SUFFOLK, SS. BOSTON, February 27, 1923.

Joseph B. Jacobs, being duly sworn, deposes and says that he is of counsel for Nassau Smelting & Refining Works, Ltd., petitioner, that he prepared the foregoing petition, and that the allegations therein contained are true to the best of his knowledge and belief.

JOSEPH B. JACOBS.

Subscribed and sworn to before me this 27th day of February, 1923.

CHARLES A. McCARRON,

[Seal]

Notary Public.

Supreme Court of the United States.

OCTOBER TERM, 1922.

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PETITIONER,

v.

BRIGHTWOOD BRONZE FOUNDRY COMPANY,
RESPONDENT.

BRIEF FOR PETITIONER IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI.

I.

The effect of a composition proceeding under the Bankruptcy Act is to supersede the bankruptcy proceedings, and substitute the composition proceeding for it.

Cumberland Glass Mfg. Co. v. De Witt & Co., 237 U.S. 447.

Greenbaum v. United States, 280 Fed. 474 (C.C.A. 6th).

II.

The bankrupt must deposit a sum sufficient to cover the composition percentage on all debts scheduled.

Bankruptcy Act, sec. 12b:

“And the consideration to be paid by the bankrupt to his *creditors*.”

Sec. 1, clause 9:

“ ‘Creditor’ shall include anyone who owns a demand or claim provable in bankruptcy . . . ”

In re Simon Fox, 6 A.B.R. 525.

In re Harvey, 144 Fed. 901.

Lowell on Bankruptcy, p. 384.

Loveland on Bankruptcy (4th ed.), p. 1265.

III.

Section 57n, that “claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication,” does not apply to composition proceedings.

In re Simon Fox, 6 A.B.R. 525, at 527:

“Creditors are not bound by the statutory period of one year from the original adjudication in bankruptcy in which to claim their respective shares,” in composition proceedings.

At page 530:

“It is even doubtful whether the year’s limitation for proving claims *against bankrupt estates*, laid down in section 57n, has any application to composition cases; no particular reason exists for requiring creditors to prove their claims at all, since the bankrupt is the only one who is interested in contesting them, and he is estopped by his schedules. . . . There being no necessity for proof of claims by creditors, what is the applicability of a limitation for proving claims? Moreover, the limitation only pertains to proof against a *bankrupt estate*, but in composition cases there

is, technically speaking, no bankrupt *estate*; the estate has been given back to its original owner."

IV.

CONFLICT OF DECISIONS.

If the decision of the Circuit Court of Appeals for the First Circuit in this case is allowed to stand, the practice of the First Circuit will differ from the practice in other circuits.

In re Harvey, 144 Fed. 901 (citing *In re Fox* with approval).

In re Aarons, 243 Fed. 634.

In re Englander's, Inc., 267 Fed. 1012.

In re Basha, 200 Fed. 951 (C.C.A. 2d).

In re Atlantic Const. Co., 228 Fed. 571.

V.

COMPOSITION BEFORE ADJUDICATION.

In 1910 section 12 of the Bankruptcy Act was amended to allow compositions before adjudication. Surely 57*n* cannot apply to composition before adjudication, because there is no time from which the period of one year is to run, and it would be absurd to require creditors to prove their claims within the year from the date of adjudication, in compositions after adjudication, whereas, in compositions before adjudication, the time within which creditors could file claims and receive their dividend would be unlimited (see dissenting opinion of Anderson, J., of the Court below).

CONCLUSION.

The petitioner submits that the decision of the Court of Appeals, confirming the order of the District Court limiting the deposit to those claims only that have been proved and allowed, was erroneous, and the Circuit Court of Appeals should have rendered a decision reversing the order of the District Court.

NASSAU SMELTING & REFINING
WORKS, LTD.,

By its Attorneys,

JOSEPH B. JACOBS,
ROBERT P. LEVIS,
JACOBS & JACOBS.